IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3744 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE D.H.WAGHELA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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GUJARAT STATE FERTILIZERS & CHEMICALS LTD

Versus

HS JANI

Appearance:

1. Special Civil Application No. 3744 of 2002

MR K.S. NANAVATI, Sr. Counsel for
NANAVATI ASSOCIATES for Petitioner No. 1
DR MUKUL SINHA for Respondent No. 1
..... for Respondent No. 2-276

CORAM : MR.JUSTICE D.H.WAGHELA

Date of decision: 11/04/2002

ORAL JUDGEMENT

The petitioner challenges the common judgement and order dated 14.9.2001 of the Labour Court, Surat in Recovery Application Nos. 585/2000 to 860/2000, whereby

the applications were allowed and the petitioner was ordered to pay to the respondents wages in respect of three days from 8.11.1999 to 10.11.1999. The workmen, respondents herein, had approached the Labour Court with the case of illegal deduction from their wages in respect of the aforesaid three public holidays and based their claim on a binding settlement dated 23.10.1993 in terms of which the workmen were eligible for twelve public holidays in a year. The parties had agreed to consolidate all the recovery applications and after an order to consolidate all the cases, evidence appears to have been recorded in only one matter.

2. Besides the documentary evidence of settlement on which the claim was based, oral evidence of one witness on both sides appears to have been recorded. According to the witness of the respondent, aforesaid three days were declared paid holidays by the petitioner company and no specific instruction was issued to the workmen to work on those days. The witness also stated in his cross-examination that the workmen working on rotating shifts used to get rotating off days and it was expressly conceded that if any public holiday was falling during the shift schedule, workmen were required to report for duty on such public holidays also. Therefore, upon the respondent's own evidence, it was clear that the workmen were required to attend their duties on the aforesaid public holidays. That finding of fact is further buttressed by the admitted fact that the workmen concerned had applied for leave for such days in order to enjoy the holiday and not to avail of the extra wages that were paid for working on such public holidays. After appreciation of evidence on record and referring to the conditions of settlement, as also the relevant circular of the company, the Labour Court has recorded a clear finding that the workmen concerned were supposed to and required to work on the aforesaid holidays. There was no dispute about the fact that the workmen had not attended the work and had remained absent. Against the above backdrop of facts, the impugned judgement is based on the slander contention that relevant condition of the settlement does not mention the requirement for certain class of workmen to attend to their duties even on the days declared as public holidays. It is therefore, deduced in the impugned judgement that if such attendance even during the public holidays were to be imposed, it could not have been done by a circular and issuance of such circular amounted to change in condition of service in violation of Section 9A of the Industrial Disputes Act.

3. Thus, the basis of the impugned judgement is that the conditions of settlement did not permit the petitioner company to stager the holidays in respect of certain class or group of employees according to the requirement. As against that, the case of the petitioner clearly was that it used to declare the public holidays for every month and declaration of the public holidays is always subject to the conditions of requirement of certain employees in certain Departments in view of continuous nature of the process involved in the production activity of the petitioner company. In view of the clear admission of the witness of the workmen about the understanding of how the public holidays were allowed in respect of the employees working on shifts, it cannot be gainsaid that by custom and tradition and according to the regular requirement of the petitioner, the workmen concerned were required to work on the aforesaid holidays. The only question which remains is whether it amounted to any change in the conditions of service. It appears from the evidence on record that it always was the condition of service to stager the holidays and the terms of the settlement, particulary condition No. 5.10 does not in any way stipulate any leave of absence or public holiday for each and every employee simultaneously. In fact, the stipulation relates to the number of public holidays for which the employee would be eligible or, at the most, they were entitled and that has nothing to do with either the tradition or the petitioner's power to stager the holidays or grant alternative holidays in view of the continuous nature of manufacturing process carried on by the company. In any view of the matter, the right to have holidays on the aforesaid dates is not flowing from the settlement as alleged by the respondent. On the other hand, the Labour Court's jurisdiction under Section 33-C of the ID Act does not extent to deciding the issue whether change if any, was in violation of Section 9A of the I.D Act.

4. Ld. Counsel Dr. Sinha vehemently argued and heavily relied upon the judgement of the Supreme Court in M/s. Tata Iron and Steel Co.Ltd. Vs. Workmen of M/s. Tata Iron and Steel Co.Ltd. (AIR 1972 SC 1917) to submit that fixation of public holidays having been founded on usage and treated as a customary privilege, changing it to some other day of rest would fall within item 8 of the Fourth Schedule and notice for effecting such change would be necessary under Section 9-A without which the same would be ineffective. However, as discussed hereinabove, in the facts of the present case, neither the public holidays in question are proved to have become

customary privilege nor was there any evidence of change and the dispute in that regard can also not be adjudicated in proceedings which are essentially in the nature of execution proceedings.

5. In the above facts and circumstances, the impugned judgement and order of the Labour Court is held to be without jurisdiction and illegal. Accordingly, the same is set aside. Rule is made absolute with no order as to costs.

(D.H.Waghela, J.)
*/Mohandas